



August 10, 2010

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attention: OCIIIO-4150-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

Re: Dependent Coverage of Children to Age 26 Interim Final Rule
File Code OCCIIIO-4150-IFC

Submitted via eRulemaking Portal: www.regulations.gov

Dear Sir or Madam:

I am writing on behalf of America's Health Insurance Plans (AHIP) to offer comments in response to the interim final rule (IFR) concerning Dependent Coverage of Children to Age 26 published in the *Federal Register* on May 13, 2010 (75 Fed. Reg. 27122). The IFR implements Section 2714 of the Patient Protection and Affordable Care Act (the "Affordable Care Act"), which was signed into law March 23, 2010.¹

AHIP is the national association representing approximately 1,300 health insurance plans that provide coverage to more than 200 million Americans. Our members offer a broad range of health insurance products in the commercial marketplace and have demonstrated a strong commitment to participation in public programs.

AHIP's members are committed to implementation of the Affordable Care Act and support efforts to expand coverage to the uninsured, particularly dependents that may otherwise lose coverage because of their age. The expansion of coverage in the group and individual markets under this circumstance helps meet a vital need for young adults who may not otherwise have access to affordable health care coverage.

Many members of our community have voluntarily agreed to make the extension of coverage available prior to the effective date of the requirements, and we thank the Secretary for recognizing these efforts in the materials that accompanied the release of the IFR. As noted in the FAQs, this early implementation will help avoid gaps in coverage for new college graduates

¹ Pub. L. No. 111-148, as amended by Pub. L. No. 111-152.



and other young adults that could otherwise occur before the IFR's effective date for plan or policy years beginning on or after September 23, 2010.

AHIP's members also support the approach taken under the IFR that establishes a special enrollment period for dependents, recognizing that a structured process for enrollment aids in a smooth transition for the expansion of coverage. In addition, a structured enrollment approach is easier, as various reforms take effect, for consumers to understand and navigate.

AHIP's comments below are intended to support the successful implementation of the expansion of coverage for dependents, while, at the same time, minimizing disruptions for consumers and other unintended consequences.

I. Clarify the Consideration of Age in Determining Premiums in the Individual Health Insurance Market

The Affordable Care Act requires group health plans and health insurance issuers offering group or individual coverage that provides dependent coverage of children to make such coverage available for an adult child until 26 years of age. The statute does not address how premiums must be calculated.

The IFR states that the terms of a health plan or health insurance coverage cannot vary based on age, and gives an example under which a group health plan cannot effect a premium "surcharge" for children who are older than age 18. The IFR also provides that a child enrolling during a special enrollment period under group coverage, providing that such a child cannot be required to pay more for coverage than a "similarly situated" individual who did not lose coverage by reason of cessation of dependent status. The examples illustrating the latter provision address group coverage only.

The IFR provides no examples of how the above provisions are to be construed with respect to coverage in the individual market. In the individual market, as permitted in most states today, premiums for family coverage take into consideration the ages of the family members covered under the policy. Further, it does not appear to be the intent of the IFR to preempt existing state laws with regard to rating in the individual market. As such, we believe that the IFR does not prohibit consideration of age in establishing premiums in the individual market, so long as a "surcharge" is not imposed on dependents older than 18, and so long as a young adult enrolling during the special enrollment period under the IFR is not required to pay more than a "similarly situated" individual who did not lose coverage because of cessation of dependent status.

AHIP recommends clarification that the IFR does not preempt existing state laws with respect to rating in the individual market and allows, to the extent permitted under state law, the consideration of age in establishing premiums in the individual health insurance



market, thereby avoiding unintended premium increases and disruptions for consumers.

II. Recognize That Certain Benefits May be Appropriately Provided on an Age-Specific Basis

As noted above, the IFR states that the terms of a plan or health insurance coverage providing coverage for dependents may not vary based on age. Many benefits are provided on an age-specific basis, as may be required under either federal or state law. The Affordable Care Act itself requires coverage of certain preventive services without cost-sharing, and, in construing this requirement; the Interim Final Rules for Coverage of Preventive Services² relies on recommendations from the United States Preventive Services Task Force, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the Health Resources and Services Administration. These bodies make recommendations based on in-depth, impartial expert review and assessment of scientific evidence. The recommendations include a broad range of preventive clinical services and are often based on age. The requirement to provide coverage for these scheduled services becomes effective for plan or policy years beginning on or after September 23, 2010. In addition, many states have enacted requirements to provide benefits on an age-specific basis.³

We do not believe it is the intent of the IFR for Dependent Coverage of Children to Age 26 to displace the requirements under federal and state law for age-specific benefits. Allowing employer and health insurance plans to continue to provide age-specific benefits in compliance with these requirements will avoid unintended increases in premiums and help keep coverage affordable.

To harmonize requirements for the coverage of preventive and other age-specific services, AHIP recommends clarification that the IFR continues to allow employer and health insurance plans to provide age-specific preventive and other benefits, as necessary to comply with federal and state benefit requirements.

III. Define Dependent for Purposes of the IFR

The Affordable Health Care Act gives the Secretary authority to promulgate regulations to define the dependents to which coverage shall be made available. The IFR discusses the conditions under which coverage must be extended to dependents and speaks to the relationship between a child and the participant or subscriber, but does not define the term “child.” In discussing the conditions of coverage, the preamble states that certain factors, such as financial dependency on

² 75 Fed. Reg. 41726 (July 19, 2010).

³ Many states require coverage of various preventive services based on age. In addition, states also require coverage of non-preventive services, such as general anesthesia and associated facility charges for dental procedures, based on age.



or residency with a parent, are no longer appropriate for adult children. The preamble then goes on to conclude that because the statute does not distinguish between minor and adult children, these factors cannot be used for eligibility for minor children.

While the Affordable Care Act does not distinguish between minor and adult children, it does state that the Act should not be construed to modify the definition of “dependent” under the Internal Revenue Code (IRC) with respect to the tax treatment of the cost of coverage. The Internal Revenue Service Notice 2010-38 (Notice) clarifies the tax treatment of employer-sponsored coverage for children who turn age 27 during a given tax year. In doing so, the Notice defines “child” to be a child within the meaning of IRC section 152(f)(1), which defines a child as an individual who is a son, daughter, stepson, or stepdaughter, and includes both an adopted child and an eligible foster child.

Not included in the IRC definition are other children, e.g., grandchildren and custodial children. Similarly, the IFR recognizes that it does not require coverage for a child of a child, i.e., a grandchild, but is silent on other children.

Fully adopting the current IRC definition of “child” as the definition for “dependent” would provide certainty to the scope of the IFR requirements, while allowing long-standing conditions of coverage to continue to apply to additional type of dependents. For example, some employer and health insurance plans provide, and some states require, coverage for grandchildren, but only if the grandchild lives with and receives financial support from the enrollee. We do not believe it was the intent of the Affordable Care Act to negate or preempt these types of requirements with respect to these broader categories of dependents.

In addition, some employer and health insurance plans voluntarily extend coverage to broader categories of dependents, including nieces, nephews and other relatives, under circumstances where the dependent lives in the enrollee’s home and relies on the enrollee for support. These “custodial” requirements are a well-established way to extend coverage to children who are dependents, without making such an expansion unworkable and unaffordable. Unfortunately, not allowing these and other criteria that support broader coverage of dependents could cause some employers and insurers to be unwilling to continue to extend this type of coverage, thwarting the intent to expand access.

To avoid making coverage less affordable and unintentionally causing some dependents to not be considered eligible for coverage, AHIP recommends that the definition of “dependent” be clarified to mean the same as a “child” as defined under the IRC section 152(f)(1).

In addition, we request acknowledgement that the IFR applies to comprehensive, major medical coverage, and not to the benefits classified as “excepted benefits” under subsection 2791(c) of

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the Public Health Service Act. The intent to apply the Affordable Care Act's market reform provisions has been previously acknowledged for the new Internet portal and in the preamble of the Interim Final Rules for Grandfathered Health Plans, and we ask that the same recognition also be made with respect to this IFR.

AHIP remains committed to our continued collaboration and dialogue and stands ready to provide information and support for the effective implementation of the extension of coverage for dependants to age 26. We appreciate the opportunity to comment on this important expansion of access to coverage.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffery L. Gabardi". The signature is fluid and cursive, with the first name being the most prominent.

Jeffery L. Gabardi
Senior Vice President, State Affairs